

We propose to amend 38 CFR 3.311(b) (2) to implement the Secretary's decision effective the date of publication of the final rule.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance program numbers are 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Health care, Individuals with disabilities, Pensions, Veterans.

Approved: November 15, 1994.

Jesse Brown,
Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is proposed to be amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.311(b)(2)(xix), remove the word "and"; in § 3.311(b)(2)(xx), remove the mark "...", and add, in its place, the mark ";;".

3. In § 3.311(b)(2), add paragraphs (xxi) and (xxii) to read as follows:

§ 3.311 Claims based on exposure to ionizing radiation.

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(b) * * *

(2) * * *

(xxi) Cancer of the rectum; and
(xxii) Lymphomas other than Hodgkin's disease.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[IL80-2-6784; FRL-5113-4]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Illinois

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) proposes to approve a State Implementation Plan (SIP) request to redesignate the Jersey County, Illinois ozone nonattainment area to attainment. The USEPA is also approving the accompanying maintenance plan as an SIP revision. The redesignation request and maintenance plan were submitted by the Illinois Environmental Protection Agency (IEPA) on November 12, 1993. The State has met the requirements for redesignation contained in the Clean Air Act (Act), as amended in 1990. The redesignation request is based on ambient monitoring data that show no violations for the ozone National Ambient Air Quality Standard (NAAQS) during the three-year period from 1990 through 1992.

DATES: Comments on this SIP revision request and on USEPA's proposed rulemaking action must be received by December 27, 1994.

ADDRESSES: Written comments should be addressed to: J. Elmer Bortzer, Chief, Regulation Development Section (AR-18J), Regulation Development Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Edward Doty, Regulation Development Section (AR-18J), Regulation Development Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Telephone Number (312) 886-6057.

SUPPLEMENTARY INFORMATION: On November 12, 1993, the IEPA submitted a redesignation and maintenance plan for Jersey County as a requested revision to the Illinois State Implementation Plan (SIP). The IEPA has requested that Jersey County be redesignated to attainment for ozone.

On November 6, 1991 (56 FR 56694), the USEPA formally designated Jersey County as a marginal ozone

nonattainment area. This classification and designation was based on a monitored violation of the ozone National Ambient Air Quality Standard (NAAQS) in Jersey County in 1988.

Jersey County is a rural county located approximately 25 miles north of St. Louis, Missouri. Based on the 1990 census, the population of Jersey County is 20,539, with the largest urban population being that of Jerseyville, with a population of approximately 8,000.

I. USEPA Redesignation Policy

The Act's requirements for redesignation to attainment are contained in section 107(d)(3)(E). These requirements and other USEPA redesignation requirements are discussed in a September 4, 1992, memorandum from the Director of the Air Quality Management Division, Office of Air Quality Planning and Standards, to Directors of Regional Air Divisions. As outlined in this memorandum, section 107(d)(3)(E) requires that the following conditions be met for redesignation to attainment:

1. The USEPA must determine that the area subject to the redesignation request has attained the NAAQS;
2. The USEPA must have fully approved the applicable SIP for the subject area under section 110(k) of the Act;
3. The USEPA must determine that the improvement in air quality in the area is due to permanent and enforceable reductions in emissions resulting from the implementation of the applicable SIP, Federal air pollution control regulations, and other federally enforceable emission reductions;
4. The USEPA must have fully approved a maintenance plan for the area as meeting the requirements of section 175A of the Act; and
5. The State must have met all requirements applicable to the area under section 110 and part D of the Act.

To demonstrate that the area has attained the ozone NAAQS, the State must show that the ozone data in the area do not exhibit violation of the NAAQS at any monitoring site in the area during the most recent three years of monitoring at the sites. In accordance with 40 CFR part 50.9, the annual average number of expected exceedances of the ozone standard (0.12 parts per million (ppm), one-hour averaged) at any monitor cannot exceed 1.0 during the three year period. The data used in this demonstration must be quality assured, in accordance with 40 CFR part 58, and collected in accordance with 40 CFR part 50, appendix H. The data should be

recorded in USEPA's Aerometric Information Retrieval System (AIRS).

The SIP for the area must be fully approved under section 110(k) of the Act and must satisfy all requirements that apply to the area. These requirements include new requirements added by the 1990 amendments to the Clean Air Act. The State must meet all requirements of section 110 and part D of the Act that were applicable prior to the submittal of the complete, finally adopted redesignation request. (It should be noted that, based on section 175A of the Act, other requirements of part D of the Act remain in effect until the USEPA approves the maintenance plan and the redesignation to attainment. If the USEPA disapproves the request to redesignate an area to attainment, these requirements remain in effect with no delay.) A SIP which meets the pre-redesignation request submittal requirements must be fully approved by the USEPA prior to USEPA's approval of the redesignation of the area to attainment of the NAAQS. The requirements of title I of the Act, which includes section 110 and part D of the Act, are discussed in the April 16, 1992, *General Preamble to Title I* (57 FR 13498).

The State must be able to reasonably attribute the improvements in air quality to permanent and enforceable emission reductions. Attainment resulting from temporary emission reductions or from temporary favorable (not conducive to high ozone concentrations) meteorology would not qualify as a permanent air quality improvement. The State should demonstrate that the emission reductions from a past high ozone period (generally the year or period for which the area's ozone classification design value was determined, 1988 for Jersey County) to the period of attainment were due to the implementation of permanent and enforceable emission control measures and were sufficient to explain the attainment of the ozone NAAQS.

Prior to the redesignation of an area to attainment, the USEPA must fully approve a maintenance plan (as a SIP revision) which meets the requirements of section 175A of the Act. The maintenance plan must provide for maintenance of the NAAQS attainment in the area for at least 10 years after the USEPA approval of the redesignation request. The maintenance plan must contain additional emission control measures as necessary to assure maintenance of the NAAQS (generally this means maintaining the precursor emissions at or below the attainment year levels). The Act also requires

(section 175A(b)) a second SIP revision 8 years after an area is redesignated to attainment to assure maintenance of the NAAQS for an additional 10 years beyond the first 10 year maintenance period.

The maintenance plan must contain such contingency measures as the USEPA deems necessary to ensure prompt correction of any violation of the NAAQS occurring after the area is redesignated to attainment or exceedance of other triggering levels, such as emissions exceeding attainment levels (this could be caused by emission increases not anticipated in the maintenance plan).

At a minimum, the maintenance plan should contain the following elements:

1. Attainment Inventory

The State must develop an emissions inventory for the initial period of attainment to identify the level of emissions which is associated with attainment of the NAAQS. This emissions inventory must be consistent with USEPA's most recent guidance on preparation and documentation of emission inventories. The emissions inventory should be based on actual, typical summer weekday emissions of ozone precursors (Volatile Organic Compounds [VOC], Oxides of Nitrogen [NO_x], and Carbon Monoxide [CO]).

2. Maintenance Demonstration

A State may generally demonstrate maintenance of the NAAQS by either showing that future emissions of the ozone precursors will not exceed the levels of the emissions in the attainment inventory or by modeling to demonstrate that the future mix of sources and emission rates will not cause a violation of the NAAQS. The maintenance plan should be based on the same type and level of modeling used to demonstrate attainment of the NAAQS in the SIP. Regardless of which approach is used, the State must project the emissions for the 10 year period following the anticipated time of the USEPA approval of the redesignation request (the State should assume that the USEPA will take two years to complete the rulemaking on the redesignation request). The projected emissions must reflect the expected actual emissions based on enforceable emission rates and typical source activity rates, such as production rates, adjusted for expected source growth. Projected emission reductions must reflect the impacts of permanent, enforceable emission control measures. The assumptions of emission reductions and source growth and techniques used

to project the emissions must be clearly documented.

3. Monitoring Network

The maintenance plan must contain provisions for the continued operation of ozone air quality monitors in the area to be redesignated. This is needed to provide verification of the maintenance of the NAAQS attainment, and is also needed to provide triggering data for the activation of contingency measures in the event of a future violation or exceedance of the NAAQS (the State may choose to activate some contingency measures when the NAAQS is simply exceeded but not yet violated to prevent future NAAQS violations).

4. Verification of Continued Attainment

The State must assure that it has the legal authority to implement and enforce all measures necessary to attain and maintain the NAAQS. In addition, the maintenance plan must indicate how the State will track the progress and success of the maintenance plan. This includes tracking air quality levels and emissions.

5. Contingency Plan

Section 175A of the amended Act requires that a maintenance plan include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after the redesignation of an area to attainment. For the purposes of section 175A, a State is not required to fully adopt contingency measures that will take effect without further action by the State. The contingency plan, however, is considered to be an enforceable part of the SIP and must ensure that the contingency measures will be adopted and implemented expeditiously after they are triggered. The plan must clearly identify the measures that will be considered for adoption, a schedule and procedure for their adoption and implementation, and a specific time limit for action by the State. The plan must also identify the specific indicators or triggers that will be used to determine when the contingency measures will be required.

II. Summary of the Illinois Redesignation Submittal

Summarized below are the contents of the Illinois redesignation request and maintenance plan.

A. Monitored Attainment of the NAAQS

During the period of 1990 through 1992 (the three year period covered by the redesignation request), two exceedances of the ozone standard,

0.127 ppm and 0.125 ppm, were monitored in Jersey County, with both exceedances recorded in 1990. The expected ozone standard exceedance rate for the 1990–1992 period was 0.67 exceedance per year. This is in contrast to seven ozone standard exceedances, with a peak ozone concentration of 0.128 ppm, monitored in 1988, when ozone monitoring was initiated in Jersey County. The IEPA has quality assured the 1990–1992 ozone data for Jersey County and has entered these data into AIRS.

As a check on the continued attainment of the NAAQS in Jersey County, one may also consider the 1993 peak ozone concentrations (not addressed in the Illinois redesignation request, but registered in AIRS). Two exceedances of the ozone standard, 0.135 ppm and 0.127 ppm, were monitored in Jersey County in 1993. The 1991 through 1993 data continue to show attainment of the ozone NAAQS, with an annual average expected exceedance rate of 0.67.

These data show that attainment of the ozone NAAQS has been monitored in Jersey County based on the most recent quality assured air quality data available.

B. Meeting Applicable Requirements of Section 110 and Part D

Until 1991 and prior to the 1990 amendment of the Act, Jersey County had been designated as attainment for ozone. The only ozone precursor emission control regulations covering Jersey County were statewide Reasonably Available Control Technology (RACT) regulations and Prevention of Significant Deterioration (PSD) regulations covering the growth of new or existing sources. The USEPA has promulgated PSD regulations for Illinois, which have been delegated to the State for implementation. The USEPA has previously approved Illinois' RACT regulations covering Jersey County.

The IEPA certifies that all RACT controls required in Jersey County have been implemented and will remain in effect after the redesignation of the County to attainment. These rules will remain in effect until the State demonstrates to the USEPA's satisfaction that the ozone standard can be maintained without one or more of the controls.

Title 40 CFR part 52, subpart O, section 52.722, evidences that the Illinois SIP was approved under section 110 of the Act and that the USEPA found that the SIP satisfied all part D, title I (as amended in 1977), requirements. The 1990 Act

amendments, however, modified section 110(a)(2) and under part D, revised sections 172 and 182 adding new requirements for all nonattainment areas. Therefore, for purposes of redesignation, to satisfy the requirement that the SIP meet all applicable requirements under the Act, USEPA has reviewed the SIP to ensure that it contains all measures and information that were due under the Act, as amended in 1990, prior to or at the same time Illinois submitted the redesignation request as considered here. The USEPA interprets section 107(d)(3)(E)(V) of the Act to mean that, for a redesignation request to be approved, the State must have met all requirements that applied to the subject area prior to and at the same time of the submission of the complete redesignation request.

B.1. Section 110 Requirements

Although section 110 of the Act was amended in 1990, the Illinois SIP addressing the Jersey County area meets the requirements of section 110(a)(2). A number of the requirements in section 110(a)(2) did not change in substance and, therefore, USEPA believes that the pre-amendment SIP meets these requirements. As to those requirements that were amended (57 FR 27936 and 23939, June 23, 1993), many duplicate other requirements of the Act and are addressed below.

B.2. Part D Requirements

Before Jersey County can be redesignated to attainment, the area and its associated SIP must meet the applicable requirements of part D. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic requirements applicable to all nonattainment areas. Subpart 2 of part D establishes additional requirements for nonattainment areas classified in table 1 of section 181(a) of the Act. As described in the April 16, 1992, General Preamble for the Implementation of Title I, specific requirements of subpart 2 may override Subpart 1's general provisions (57 FR 13501). On November 6, 1991, Jersey County was classified as a marginal ozone nonattainment area (56 FR 56694). Therefore, in order to be redesignated to attainment, the State, for Jersey County, must meet the applicable requirements of subpart 1 of part D, as well as the applicable requirements of subpart 2 of part D as they pertain to marginal ozone nonattainment areas.

B.2.a. Subpart 1 of Part D—Section 172(c) Provisions

Section 172(c) sets forth general requirements applicable to all nonattainment areas. Under section 172(b), the section 172(c) requirements are applicable on a schedule as determined by the Administrator, but no later than three years after an area has been designated as nonattainment under the amended Act. With the exception of requirements for which subpart 2 established SIP submission dates for corollary requirements prior to November 12, 1993 (which are discussed below), the requirements of section 172(c) were not applicable to ozone nonattainment areas on or before November 12, 1993, the date on which the State of Illinois submitted the complete redesignation request for Jersey County. Therefore, these requirements, including those of sections 172(c)(2) and 172(c)(9) are not applicable requirements for purposes of evaluating this redesignation request.

With respect to the requirement of section 172(c)(1) concerning the adoption of RACT, the USEPA notes that, as discussed elsewhere in this action, Illinois has completed the adoption of stationary source RACT rules statewide, the USEPA has approved these rules in prior rulemaking, and has found no deficiencies in the rules for Jersey County. In addition, the USEPA notes that, with respect to Jersey County, no additional RACT controls beyond the RACT rules already covered in the SIP are necessary or were required at the time of the submission of the redesignation request.

With respect to the emissions inventory requirement of section 172(c)(3), the USEPA notes that the State of Illinois has developed and submitted the required emissions inventory, which section 182(a)(1) required to be submitted by November 15, 1992. This emissions inventory has been the subject of separate review and rulemaking by the USEPA. EPA expects to take final action approving the emissions inventory before the USEPA takes final action approving the redesignation request for Jersey County. The emissions inventory must be approved for EPA to take final action approving this redesignation request.

As for the section 172(c)(5) New Source Review (NSR) requirement, once an area is redesignated to attainment this requirement is no longer applicable. The area then becomes subject to prevention of significant deterioration (PSD) requirements in lieu of the part D NSR program. Under USEPA policy

described in a Memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, and area need not comply with the NSR requirement of section 172(c) to be redesignated if it is demonstrated that the area will continue to maintain the ozone standard without a part D NSR program in place. As the State of Illinois has demonstrated the maintenance of the standard will occur without a part D NSR program (see discussion below) and PSD requirements will apply, the lack of fully-approved part D NSR rules applicable to Jersey County does not preclude the redesignation of Jersey County.

The requirements of section 172(c) are discussed below along with their relevancy to the redesignation request at hand:

(1) Section 172(c)(1) of the Act requires SIPs to provide for all Reasonably Available Control Measures (RACM) as expeditiously as practicable and to provide for attainment of the NAAQS. As discussed elsewhere in this action, Illinois has completed the adoption of stationary source RACT rules statewide. The USEPA has approved these statewide RACT rules in prior rulemaking and has found no deficiencies in the rules for Jersey County.

In addition, the USEPA notes that, with respect to Jersey County, no additional RACM controls beyond the RACT rules already covered in the SIP are necessary upon redesignation to attainment. The April 16, 1992, General Preamble to the Implementation of Title I (57 FR 13560) explains that section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of RACM as expeditiously as practicable. The USEPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in the area's attainment demonstration. Because attainment has been reached in Jersey County, no additional measures are needed to provide for attainment.

(2) Section 172(c)(2) requires the SIP to provide for Reasonable Further Progress (RFP) towards attainment of the NAAQS. This requirement only has relevance during the time it takes the area to attain the NAAQS. Because Jersey County has already attained the NAAQS, the SIP has already achieved the necessary RFP towards attainment of the NAAQS.

(3) Section 172(c)(3) requires the SIP to contain a comprehensive, accurate, current inventory of actual emissions

from all sources of the relevant pollutants. The State of Illinois has developed and submitted the required emissions inventory for Jersey County. This emissions inventory has been the subject of separate review and rulemaking by the USEPA. The approval of the emissions inventory is expected to be (and must be) finalized before the USEPA takes action to approve in final the redesignation of Jersey County to attainment for ozone.

(4) Section 172(c)(4) requires the SIP to identify and quantify the emissions which will be allowed to result from the construction of major new or modified stationary sources in the ozone nonattainment areas. Although the USEPA has not approved Illinois' NSR regulations, it should be noted that once an area is redesignated to attainment, nonattainment NSR requirements are not generally applicable. The redesignated area becomes subject to PSD requirements instead of the NSR requirements. The USEPA has promulgated acceptable PSD regulations for Illinois and has delegated the implementation of these regulations to the State. It should be noted, however, that until the USEPA officially redesignates Jersey County to attainment for ozone, sources seeking permits for major modifications or major source construction must be addressed through a new source review acceptable to the USEPA.

(5) Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, the USEPA believes that the Illinois SIP meets the requirements of section 110(a)(2).

(6) Section 172(c)(9) requires the SIP to contain contingency measures to be undertaken if an area fails to make RFP or fails to attain the NAAQS. Since Jersey County has attained the NAAQS, the section 172(c)(9) contingency measure requirements are not applicable unless the redesignation request and maintenance plan are not fully approved. It should be noted that section 175A contingency measures apply to areas that are redesignated to attainment.

B.2.b. Other Part D Requirements

Below is a summary of Illinois' compliance with the part D requirements for marginal ozone nonattainment areas, such as Jersey County.

(1) *Submittal of a Comprehensive Base Year Emissions Inventory.* Section 182(a)(1) of the Act requires the State to submit a comprehensive, accurate, current inventory of actual emissions from all sources of ozone precursors. As

noted above, Illinois has submitted a final, adopted 1990 base year emissions inventory and associated documentation for Jersey County. This emissions inventory is being reviewed in a separate rulemaking action. A Technical Support Document (TSD) recommending approval of this emissions inventory has been prepared to support a direct final rulemaking on this emissions inventory. This emissions inventory must be approved in final rulemaking before the USEPA can approve the redesignation of Jersey County in final rulemaking.

(2) *Emission Statement SIP Revision.* Section 182(a)(3)(B) of the Act requires the State to submit a SIP revision to require stationary sources of VOC or NO_x to annually submit statements of emissions from the sources. Illinois has submitted this SIP revision. A final USEPA rulemaking approving this SIP revision was published on September 9, 1993 (58 FR 47379).

(3) *New Source Review Regulations.* Section 182(a)(2)(C) of the Act requires the State to submit a SIP revision to: (a) require source permits in accordance with sections 172(c)(5) and 173 of the Act for the construction and operation of each new or modified major source (with respect to the emissions of ozone precursors); and (b) correct requirements in the existing SIP concerning permit programs as were required under section 172(b)(6) of the pre-1990 Act to comply with regulations promulgated by the USEPA prior to the 1990 amendment of the Act. Illinois has submitted a SIP revision request to comply with the requirements of section 182(a)(2)(C). The USEPA has reviewed this SIP revision request and has proposed to approve it (September 23, 1994, 59 FR 48839). Although the USEPA has not taken final rulemaking Action on this SIP revision, it should be noted that the USEPA does not consider compliance with these requirements to be a prerequisite to the redesignation or an area to attainment of the ozone NAAQS. The USEPA believes that the applicability of the part C PSD program to maintenance areas makes it unnecessary to require that an area have obtained full approval of NSR regulations required by part D of the Act in order to be redesignated. The USEPA believes that this interpretation of the Act is appropriate notwithstanding the requirement in section 175A(d) that the contingency provisions of a maintenance plan include a commitment on the part of the State to implement all measures to control the relevant air pollutant that were contained in the SIP prior to redesignation. The term "measure" is

not defined in section 175A(d) and it appears that Congress utilized the terms "measure" or "control measure" differently in different provisions of the Act that concern the PSD and NSR permitting programs. Compare section 110(a)(2)(A) and (C) with section 161. In light of this ambiguity in the use of the term "measure," USEPA believes that the term "measure" as used in section 175A(d) may be interpreted so as not to include NSR permitting programs. That this is an appropriate interpretation is further supported by USEPA's historical practice, dating before the amended Act, of not requiring redesignating areas to demonstrate through modeling or to otherwise justify replacing the nonattainment area NSR program with the PSD program once the areas were redesignated. Rather, the USEPA has historically allowed the NSR programs to be automatically replaced by the PSD programs upon redesignation.

(4) *RACT corrections.* Section 182(a)(2)(A) of the Act requires the State to correct deficiencies in the State's RACT regulations noted by the USEPA prior to the amended Act. The State notes that no deficiencies were noted for the RACT regulations applicable to Jersey County. Therefore, RACT corrections are not an issue for the Jersey County redesignation.

(5) *Conformity of federal actions with the SIP.* Section 176(c) of the Act requires the States to revise their SIPs to establish criteria and procedures to ensure that Federal actions, before they are taken, conform to the air quality planning goals in the applicable SIPs. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. or the Federal Transit Act ("transportation conformity"), as well as to all other Federal actions ("general conformity"). Section 176 further provides that the conformity revisions to be submitted by the States be consistent with Federal conformity regulations that the Act required USEPA to promulgate. Congress provided for the State revisions to be submitted one year after the date for promulgation of final USEPA conformity regulations. When that date passed without such promulgation, USEPA's General Preamble for the Implementation of Title I informed the States that its conformity regulations would establish a submittal date (see 57 FR 13498, 13557, April 16, 1992).

The USEPA promulgated final transportation conformity regulations on November 24, 1993, (58 FR 62188) and general conformity regulations on

November 30, 1993, (58 FR 63214). These conformity regulations require the States to adopt both transportation and general conformity provisions in the SIPs for areas designated nonattainment or subject to a maintenance plan approved under section 175A of the Act. Pursuant to section 51.396 of the transportation conformity rule and section 51.851 of the general conformity rule, the State of Illinois is required to submit a SIP revision containing transportation conformity criteria and procedures consistent with those established in the Federal rule by November 25, 1994. Similarly, the State of Illinois is required to submit a SIP revision containing general conformity criteria and procedures consistent with those established in the Federal rule by December 1, 1994. Because the deadlines for these submittals have not yet come due, they are not applicable requirements under section 107(d)(3)(E)(V) and, thus, do not affect approval of the redesignation request. It should be noted, however, that regardless of the attainment status of Jersey County, Illinois is obligated under the transportation conformity rule and under the general conformity rule to submit the conformity SIP revisions, including revisions covering Jersey County by the deadlines discussed here. Therefore, the attainment status of Jersey County should not be an issue in this case. It is further noted that the Illinois redesignation request for Jersey County indicates that the State of Illinois will submit a SIP revision to meet USEPA's conformity requirements after Illinois has had sufficient time to review and act on USEPA's final conformity regulations.

C. Improvement of Air Quality Due to Permanent and Enforceable Emission Reductions

The IEPA notes, on the basis of relative emissions and on the basis of the meteorology leading to high ozone concentrations in Jersey County, that the high ozone concentrations observed in Jersey County in 1988 were due to ozone precursor emissions in the St. Louis/Metro-East St. Louis ozone nonattainment area. For example, the IEPA notes that the 1990 summertime VOC emissions in Jersey County were only 20 tons per day while the VOC emissions in the St. Louis/Metro-East St. Louis ozone nonattainment area were 922 tons per day. Given the proximity of the St. Louis/Metro-East St. Louis ozone nonattainment area, the dominance of ozone precursor emissions from that area compared to those from Jersey County, and the

meteorology of peak ozone days in Jersey County (winds are predominately from the southeast through southwest on these days placing Jersey County immediately downwind of the St. Louis/Metro-East St. Louis area), one can see that the ozone precursor emissions in the St. Louis/Metro-East St. Louis area are the likely source of the high ozone concentrations in Jersey County.

Between 1987 and 1990, the following VOC emission control measures were implemented in the Metro-East St. Louis area: (1) reduction in fuel volatility (Reid Vapor Pressure [RVP]) from 11.2 pounds per square inch (psi) to 9.0 psi; (2) continued implementation of the Federal Motor Vehicle Emission Control Program (FMVCP); (3) basic vehicle Inspection and Maintenance (I/M); and (4) RACT. In Jersey County, the following VOC emission control measures were implemented between 1987 and 1990: (1) reduction in fuel RVP from 11.2 psi to 9.5 psi; (2) continued implementation of the FMVCP; and (3) RACT on major sources. These emission control programs produced real and permanent decreases in VOC emissions and are responsible for the attainment of the ozone NAAQS in Jersey County.

The largest emission reductions have occurred for mobile sources and gasoline related evaporative emissions, which are a significant portion of the total VOC emissions for the St. Louis/Metro-East St. Louis and Jersey County areas. Mobile source emissions decreased approximately 25 percent between 1987 and 1990, and gasoline evaporative emissions decreased approximately 10 percent in the same time period.

D. Maintenance Plan

The following summarizes Illinois' maintenance plan for Jersey County:

(1) *Emission certification and tracking.* The IEPA will continue to inventory ozone precursor emissions in Jersey County and will make periodic updates in the emissions inventory consistent with the requirements of the Act. The IEPA will track Jersey County emissions to ensure that significant increases in emissions are identified and evaluated for possible air quality impacts. If significant negative air impacts are indicated, appropriate regulatory action will be initiated.

(2) *Maintenance of existing control programs.* The IEPA commits to continue enforcement of all State-adopted emission control measures included in the Illinois SIP. This will include review and issuance of stationary source permits and inspection of emission sources

consistent with the USEPA-approved Illinois program plan. This commitment insures that future VOC emission levels will not exceed current levels in Jersey County.

(3) *Compliance with Act requirements for the Metro-East St. Louis area.* The IEPA notes that the Act requires the St. Louis/Metro-East St. Louis ozone nonattainment area to achieve additional VOC emission reductions beyond the current emission levels. For example, the area will achieve an additional 15 percent VOC emission reduction from the 1990 emission level by 1996 as the result of Reasonable Further Progress (RFP) requirements. Accounting for source growth and emission reductions expected in the Metro-East St. Louis area through 2004, the IEPA expects an 18 ton per day VOC emission reduction between 1990 and 2004 (ten years after the year in which the USEPA is expected to approve the redesignation of Jersey County). This emission decrease does not account for the additional emission reduction that will occur in the St. Louis/Metro-East St. Louis area as a result of the attempt to attain the ozone standard by 1996.

(4) *Contingency measures.* After Jersey County is redesignated to attainment, the trigger for contingency measures will be a violation of the ozone standard based on quality assured data and a notice from the USEPA that the State of Illinois has failed to maintain the ozone NAAQS. After these triggering conditions have occurred, the IEPA will select the appropriate contingency measure(s) to prevent a violation of the ozone standard from reoccurring. The State commits to apply such a contingency measure within 18 months after the receipt of the notification from the USEPA of the NAAQS violation (A time schedule for the actions leading to the implementation of emission control measures was not given in the maintenance plan. It is assumed that the State will adopt necessary regulations earlier than 18 months, such that the regulations can be implemented within the 18 month time period). The contingency measure(s) to be considered will be selected from the following list or from measures deemed appropriate

and effective at the time the control measure selection is actually made:

- a. lower Reid vapor pressure for gasoline
- b. reformulated gasoline program
- c. Stage I and breathing controls at gasoline service stations
- d. Stage II vapor recovery controls at gasoline service stations
- e. extended geographic coverage of existing control measures
- f. requirements for RACT for existing source covered by USEPA Control Technique Guidelines (CTGs) issued in response to the amended Act
- g. application of RACT to non-major sources
- h. implementation of one or more transportation control measures sufficient to achieve at least a 0.5 percent reduction in Jersey County VOC emissions. The transportation control measures will be selected from the following:
 - i. trip reduction programs, including but not limited to employer-based transportation management plans, areawide rideshare programs, work schedule changes, and telecommuting
 - ii. transit improvements
 - iii. traffic flow improvements
 - iv. other transportation control measures in widespread use that the State and local governments deem to be appropriate
- i. alternative fuel programs for fleet vehicle operations
- j. controls on consumer products consistent with those adopted elsewhere in the United States
- k. requirements for VOC emission offsets for new and modified major VOC sources
- l. requirements for VOC emission offsets for new and modified minor VOC sources
- m. increased ratio of emission offsets required for new sources; and
- n. requirements for VOC controls on new minor sources.

The contingency measures may be considered for Jersey County or for upwind areas whose emissions impact the air quality in Jersey County. The selection of a particular contingency measure for implementation will be based on VOC emission reduction potential, cost-effectiveness, economic

and social considerations, or other factors that the IEPA deems to be appropriate.

(5) *Emission control authority and additional commitments.* The IEPA certifies that it has the authority to continue the application of existing emission control measures and additional emission control measures if required.

The IEPA commits to continue monitoring of ozone in Jersey County for the purposes of tracking continued maintenance of the ozone standard attainment. Additionally, the IEPA commits to revise the maintenance plan as necessary to comply with any subsequent USEPA finding that the maintenance plan is inadequate to maintain attainment of the ozone NAAQS (such a finding would be made by the USEPA if subsequent violations of the ozone standard showed that the maintenance plan is adequate to maintain attainment of the ozone standard or to further lower emissions after a monitored violation of the ozone standard) and to revise the maintenance plan in eight years in compliance with section 175A of the Act.

(6) *Demonstration of maintenance.* To demonstrate maintenance of the NAAQS, the IEPA has projected VOC, NO_x, and CO emissions to 2004, ten years after USEPA is expected to approve the redesignation of Jersey County. Emission projections were based on methodology consistent with USEPA guidelines. For stationary point sources, the IEPA used growth factors obtained from Regional Economic Models Incorporated (REMI) using Illinois-specific data. Area source and off-highway emissions were projected using population projections and other factors consistent with the approach used to project emissions in the State's 15 percent rate of progress plan (currently under development). On-highway emissions were projected assuming an annual growth rate of 2.5 percent as estimated by the Illinois Department of Transportation. On-highway emissions were estimated using MOBILE5a.

Emission estimates for the attainment base year (1990), 2006, and several interim years are given below:

VOC EMISSIONS (TONS PER DAY)

	1990	1995	2000	2004
Point sources	0.08	0.09	0.09	0.10
Area sources	2.79	2.81	2.83	2.84
On-road mobile sources	1.51	1.35	1.19	1.06
Off-road mobile sources	1.41	1.42	1.44	1.45

VOC EMISSIONS (TONS PER DAY)—Continued

	1990	1995	2000	2004
Biogenic sources	14.65	14.65	14.65	14.65
Total	20.44	20.32	20.20	20.10

NO_x EMISSIONS (TONS PER DAY)

	1990	1995	2000	2004
Point sources	0.00	0.00	0.00	0.00
Area sources	0.06	0.06	0.06	0.06
On-road mobile sources	1.50	1.50	1.49	1.49
Off-road mobile sources	2.76	2.86	2.95	3.03
Totals	4.32	4.42	4.50	4.58

CO EMISSIONS (TONS PER DAY)

	1990	1995	2000	2004
Point sources	0.00	0.00	0.00	0.00
Area sources	0.56	0.56	0.56	0.56
On-road mobile sources	9.74	7.95	6.16	4.73
Off-road mobile sources	5.93	5.99	6.06	6.11
Totals	16.23	14.50	12.78	11.40

The IEPA believes the decrease in VOC and CO emissions and relatively constant NO_x emissions (the small increase in NO_x emissions between 1990 and 2004 is viewed by the IEPA to be inconsequential with respect to ozone concentration changes) between 1990 and 2004 demonstrates the maintenance of the ozone NAAQS for the required ten year maintenance period.

It should be noted that the interim year emissions above were determined by the USEPA based on discussions with the IEPA. The USEPA and IEPA agreed that the interim year emission estimates should be based on linear interpolation between the 1990 and 2004 emission estimates. This is consistent with the source growth estimation procedure used by the State to estimate the 2004 emission levels, and USEPA believes that this method is appropriate and reasonable for estimating the interim year emissions. The USEPA believes that this method provides reasonable estimates of the emission levels in those years and does not underestimate those emissions. The interim year estimates support the IEPA's conclusion that the ozone NAAQS should be maintained in Jersey County for the period between 1990 and 2004.

III. USEPA Analysis of Redesignation Request

1. Monitored Attainment of the NAAQS

The IEPA has collected quality assured ozone data showing attainment of the ozone standard at all monitoring sites during the most recent three years of monitoring. These data are recorded in AIRS.

2. Approved State Implementation Plan

Jersey County is covered by a SIP approved by the USEPA under section 110 and part D of the Act. Illinois has implemented this SIP. The implementation of this SIP included the adoption and implementation of USEPA approved RACT regulations and other required reasonably available control measures required by the pre-1990 Act.

Illinois has complied with the amended Act. Illinois has submitted a 1990 base year emissions inventory for VOC, CO, and NO_x emissions. This emissions inventory appears to be acceptable, and must be approved in final before the USEPA can approve the redesignation of Jersey County to attainment for ozone. The emission inventory is the subject of a separate rulemaking action. Illinois has also submitted a SIP revision requiring annual emission statements from major sources and the SIP was approved by USEPA on September 9, 1993, (See 58 FR 47379).

As noted above, although Illinois' NSR regulations have not been

approved by the USEPA, the USEPA does not consider this to be reasonable basis for disapproving Illinois' redesignation request since PSD requirements will replace NSR after Jersey County has been redesignated to attainment. Until such time, addition of major new sources or major modification of existing ozone precursor sources must be covered NSR permits acceptable to both the State of Illinois and the USEPA.

Lack of adopted mobile source conformity regulations is inconsequential since such regulations are required whether Jersey County is designated as nonattainment or attainment for ozone.

3. Improvement of Air Quality Due to Permanent Emission Reductions

Implementation of VOC emission controls in Jersey County and in the St. Louis/Metro-East St. Louis ozone nonattainment areas has led to permanent, enforceable emission reductions which can explain the observed improvement in ozone levels in Jersey County.

4. Maintenance Plan

The contingency portion of the maintenance plan was found to be acceptable. In addition, an acceptable demonstration of maintenance for Jersey County has been made through emission projections to 2004.

One issue concerning the contingency measures, however, must be noted. As

discussed above, Illinois has chosen to include the implementation of tighter gasoline RVP (requiring lower RVP) requirements as a contingency measure. At the same time Illinois was finalizing its maintenance plans, the USEPA issued new guidance concerning the use of lower RVP as contingency measures in maintenance plans. This new guidance was provided in a November 8, 1993, memorandum from Michael Horowitz, Office of General Counsel, to Directors of Air and Radiation Divisions. The guidance indicates that, for States to include lower RVP as a contingency measure in maintenance plans, the maintenance plan must include several things with respect to this contingency measure. First, the maintenance plan must indicate that if the former nonattainment area fell back into nonattainment, the State would submit a request to the USEPA to find under section 211(c)(4)(C) of the Act that the lower RVP requirement is necessary for the area to achieve the ozone NAAQS. Second, since the implementation of a lower RVP would rely upon USEPA's determination of whether it was necessary to achieve attainment, the State must provide for the possibility that a lower RVP could not be implemented. To do so, the State would need to provide for a backup measure in the maintenance plan. The maintenance plan could also include a commitment to adopt, as an alternative to the specified measure, measures identified by the USEPA as practicable in its denial of the State's request for a lower RVP requirement. If the State chooses to adopt measures specified by the USEPA and the USEPA has provided several options for acceptable measures, the State must adopt the requisite number of these measures as is necessary to again achieve the standard. The State would need to include a schedule for submittal of the section 211(c)(4)(C) request to the USEPA and a schedule for final adoption and implementation of a lower RVP standard, or the back-up measure(s), or the alternative measures selected by the USEPA. The schedule would need to be tied to the triggering event for the contingency measure, not to USEPA action on the 211(c)(4)(C) request.

Notwithstanding the November 8, 1993, policy discussed above, which was not available to Illinois at the time the State was finalizing and submitting its maintenance plans to the USEPA, USEPA should approve Illinois' maintenance plan as it currently exists. This is because Illinois has identified a wide range of contingency measures to choose from in the maintenance plan

and is, therefore, not relying exclusively on lower RVP requirements as a contingency measure. If Illinois, however, upon the triggering of the need to implement contingency measures, chooses to implement requirements for lower RVP, Illinois must submit the section 211(c)(4)(C) request in compliance with the Act.

Based on the above, it is recommended that the USEPA approve Illinois' request for the redesignation of Jersey County to attainment for ozone as well as Illinois' maintenance plan for this county.

IV. USEPA's Proposed Rulemaking Action

The USEPA proposes to approve the redesignation of Jersey County to attainment for ozone because the State of Illinois has met the requirements of the Act revising the Illinois ozone SIP.

V. Request for Public Comments

USEPA is requesting comments on the requested SIP revision and this proposed rule. As indicated at the outset of this notice, USEPA will consider any comments received by December 27, 1994.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D, of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore,

because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. USEPA*, 427 U.S. 246, 256-66 (1976)

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 24, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Ozone, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: November 16, 1994.

Jo Lynn Traub,
Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

Subpart O—Illinois

2. Section 52.726 is amended by adding paragraph (h) to read as follows:

§ 52.726 Control strategy: Ozone.

* * *

(h) Approval—On November 12, 1993, the Illinois Environmental Protection Agency submitted an ozone redesignation request and maintenance plan for Jersey County ozone

nonattainment area and requested that Jersey County be redesignated to attainment for ozone. The redesignation request and maintenance plan meet the redesignation requirements in section 107(d)(3)(d) of the Act as amended in 1990. The redesignation meets the Federal requirements of section 182(a)(1) of the Clean Air Act as a revision to the Illinois ozone State Implementation Plan for Jersey County.

[FR Doc. 94-29144 Filed 11-23-94; 8:45 am]
BILLING CODE 6560-60-P

40 CFR Part 60

[AD-FRL-4507-8]

Amendments to Standards of Performance for New Stationary Sources; Monitoring Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: Revisions are proposed to the monitoring requirements of subpart A and to performance specification 1 (PS-1) of appendix B. Today's action proposes revisions to clarify and update requirements for source owners and operators who must install and use continuous stack or duct opacity monitoring equipment. Today's action also proposes amendments regarding design and performance validation requirements for continuous opacity monitoring system (COMS) equipment in appendix B, PS-1. These amendments to subpart A and PS-1 will not change the affected facilities' applicable emission standards or requirement to monitor. The amendments will: (1) clarify owner and operator and monitor vendor obligations, (2) reaffirm and update COMS design and performance requirements, and (3) provide EPA and affected facilities with equipment assurances for carrying out effective monitoring.

A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed rule.

DATES: *Comments.* Comments must be received on or before January 24, 1995.

Public Hearing. If anyone contacts EPA, requesting to speak at a public hearing by December 16, 1994, a public hearing will be held on December 27, 1994 beginning at 10 a.m. Persons interested in attending the hearing should call the contact person

mentioned under **ADDRESSES** to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony at the public hearing must contact EPA by December 5, 1994.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Air Docket Section (LE-131), Attention: Docket No. A-94-07, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at EPA's Office of Emission Measurement Laboratory Building, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should contact Mr. Solomon O. Ricks, Emission Measurement Branch (MD-19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-3576.

Docket. A docket, No. A-94-07, containing information relevant to this rulemaking, is available for public inspection between 8:30 a.m. and noon and 1:30 p.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, room M-1500, First Floor, Waterside Mall, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning the standard, contact Mr. Solomon Ricks at (919) 541-5242, Emission Measurement Branch, Technical Support Division (MD-19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The following outline is provided to aid in reading the preamble to the proposed method.

- I. Introduction
- II. Summary of Proposed Revision
 - A. Design
 - B. Demonstration of Design
 - C. Performance Specifications
- III. Administrative Requirements
 - A. Public Hearing
 - B. Docket
 - C. Office of Management and Budget Reviews
 - D. Regulatory Flexibility Act Compliance

I. Introduction

These revisions to subpart A and PS-1 will apply to all continuous opacity monitors installed for purposes of monitoring opacity, as required in the Code of Federal Regulations (CFR). These requirements may also apply to stationary sources located in a State,

District, Reservation, or Territory that has adopted these requirements into its implementation plan.

The PS-1, Specifications and Test Procedures for Opacity Continuous Emission Monitoring Systems in Stationary Sources, was first promulgated in the **Federal Register** (40 FR 64250) on October 6, 1975. A subsequent revision to this specification was promulgated in the **Federal Register** March 30, 1983 (48 FR 13322). These specification revisions for COMS's are based on information obtained by EPA from additional experience with the procedures since that promulgated revision. Prior to today's action, the proposal was distributed for comment to a review group of EPA Regional Offices and a State agency. In addition, EPA solicited input from opacity monitor manufacturers and concerned industries. The EPA considered comments from these sources and incorporated additional changes.

The specifications, in total, shall apply to all COMS's installed or replaced after the date of promulgation. All COMS that have been installed prior to the date of promulgation of these revisions would not be subject to these revisions unless replaced or specifically required to comply. Following promulgation, a source owner, operator, or manufacturer will be subject to these PS's of installing a new COMS, relocating a COMS, replacing a COMS, recertifying a COMS that has undergone substantial refurbishing (in the opinion of the enforcing agency), or has been specifically required to recertify the COMS with these revisions.

The COMS, which met PS-1 prior to these revisions, may not meet today's proposed specifications. Alternative designs or procedural modifications to PS-1, approved by the Administrator prior to the proposal of these revisions, are not applicable to monitors subject to these revisions. However, source owners and operators, as well as manufacturers, may apply or reapply per § 60.11(f) to the Administrator for alternatives to these PS's.

II. Summary of Proposed Revisions

Today's action proposes to restructure and clarify PS-1. The proposal restructures organization of the specification and delineation of responsibilities to demonstrate conformance with design, location, and performance requirements.

Opacity monitoring system technology works in the following way: light with specific spectral characteristics is projected from a lamp through the effluent in the stack or duct,